

JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LAURACK D. BRAY,

Plaintiff,

v.

MATTHEW S. KENEFICK, et al.,

Defendants.

Case No. 2:24-cv-08640-FMO (AJR)

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE FOR
FAILURE TO COMPLY WITH A
COURT ORDER**

INTRODUCTION

On October 8, 2024, Plaintiff filed a Complaint and a Request to Proceed in Forma Pauperis (“IFP request”). (ECF Nos. 1, 5.) In the Complaint, Plaintiff alleged racial discrimination in violation of 42 U.S.C. § 1981 and a state law claim of defamation. (ECF No. 1 at 9-11.)

On October 31, 2024, the Court issued an order postponing a ruling on the IFP request until Plaintiff provided more information. (ECF No. 15.) The Court ordered Plaintiff either to file another IFP request that explains why his monthly expenses exceeds his monthly income by \$1,070 or to pay the filing fee of \$405. (*Id.*) The Court also ordered Plaintiff to file an Amended Complaint with more factual allegations for his claim of racial discrimination. (*Id.*) The Court warned

1 Plaintiff that his failure to comply with the Court's order within 30 days could
2 result in the dismissal of this action. (*Id.*)

3 As of this date, more than 30 days later, Plaintiff has not filed another IFP
4 request, paid the filing fee, or filed an Amended Complaint. Instead, Plaintiff has
5 filed a "Motion to the Chief Judge" arguing that this case was improperly assigned
6 to the undersigned District Judge and that this case should proceed before a
7 different District Judge who grants the IFP request. (ECF No. 16.) For the
8 following reasons, this action is dismissed without prejudice.

9 DISCUSSION

10 A. Legal Standard.

11 A district court has the inherent power under Federal Rule of Civil Procedure
12 41(b) to dismiss an action for failure to prosecute or to comply with the court's
13 order. *Link v. Wabash R. Co.*, 370 U.S. 626, 631 (1962). Specifically, the failure of
14 a plaintiff to comply with a district court's order to file an amended complaint is
15 properly met with the sanction of dismissal under Rule 41(b). *Applied*
16 *Underwriters, Inc., v. Lichtenegger*, 913 F.3d 884, 891 (9th Cir. 2019) (collecting
17 cases). "Under Ninth Circuit precedent, when a plaintiff fails to amend his
18 complaint after the district judge dismisses the complaint with leave to amend, the
19 dismissal is typically considered a dismissal for failing to comply with a court order
20 rather than for failing to prosecute the claim." *Yourish v. California Amplifier*, 191
21 F.3d 983, 986 (9th Cir. 1999).

22 "[I]n order for a court to dismiss a case as a sanction, the district court must
23 consider five factors: '(1) the public's interest in expeditious resolution of litigation;
24 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants;
25 (4) the public policy favoring disposition of cases on their merits; and (5) the
26 availability of less drastic alternatives.'" *Yourish*, 191 F.3d at 986 (quoting
27 *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998)). A district
28 court's sanction of dismissal generally will be affirmed where at least four factors

1 support dismissal or where at least three factors strongly support it. *Hernandez*, 138
2 F.3d at 399. As stated below, four of the five factors support dismissal.

3 **B. Analysis.**

4 **1. The Public's Interest in Expeditious Resolution.**

5 The first factor supports dismissal. "[T]he public's interest in expeditious
6 resolution of litigation always favors dismissal." *Yourish*, 191 F.3d at 990.

7 **2. The Court's Need to Manage Its Docket**

8 The second factor also supports dismissal. Plaintiff's failure to respond to
9 the Court's Order interferes with the Court's ability to manage its docket. *See*
10 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) ("The trial judge is in the
11 best position to determine whether the delay in a particular case interferes with
12 docket management and the public interest. Arguably, Pagtalunan's petition has
13 consumed some of the court's time that could have been devoted to other cases on
14 the docket.") (internal citation omitted); *see also Irvin v. Madrid*, 749 F. App'x
15 546, 547 (9th Cir. 2019) ("The second factor also favors dismissal because the
16 district court is in the best position to determine whether a particular set of
17 circumstances interferes with docket management.").

18 **3. The Risk of Prejudice to Defendants.**

19 The third factor also supports dismissal. The risk of prejudice is "related to the
20 plaintiff's reason for defaulting in failing to timely amend." *Yourish*, 191 F.3d at
21 991. The record suggests no plausible reason for Plaintiff's failure to comply with
22 the Court's Order. This indicates sufficient prejudice to Defendant. *See In re Eisen*,
23 31 F.3d 1447, 1452-53 (9th Cir. 1994) (recognizing that the law presumes injury to
24 the defendants from unreasonable delay).

25 **4. The Public Policy Favoring Disposition of the Merits.**

26 The fourth factor weighs against dismissal. "We have often said that the
27 public policy favoring disposition of cases on their merits strongly counsels against
28 dismissal." *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460

1 F.3d 1217, 1228 (9th Cir. 2006) (citing *Hernandez*, 138 F.3d at 399). On the other
2 hand, “this factor lends little support to a party whose responsibility it is to move a
3 case toward disposition on the merits but whose conduct impedes progress in that
4 direction.” *Products Liability Litigation*, 460 F.3d at 1228 (citations and quotation
5 marks omitted). Thus, this factor alone does not preclude dismissal.

6 **5. The Availability of Less Drastic Alternatives.**

7 The fifth factor supports dismissal. “Here the fact that the district court
8 allowed [Plaintiff] an additional thirty days to amend his complaint . . . constituted
9 an attempt at a less drastic sanction than outright dismissal.” *Ferdik v. Bonzelet*,
10 963 F.2d 1258, 1262 (9th Cir. 1992). The Court also warned Plaintiff that the
11 failure to comply with the Court’s Order to amend his Complaint would result in
12 dismissal. *See Products Liability Litigation*, 460 F.3d at 1229 (“Warning that
13 failure to obey a court order will result in dismissal can itself meet the
14 ‘consideration of alternatives’ requirement.”) (citing, *inter alia*, *Ferdik*, 963 F.2d at
15 1262 (“Moreover, our decisions also suggest that a district court’s warning to a
16 party that his failure to obey the court’s order will result in dismissal can satisfy the
17 ‘consideration of alternatives’ requirement.”)). Despite the Court’s warning,
18 Plaintiff failed to file an Amended Complaint.

19 **C. Conclusion.**

20 Four of the five factors support dismissal of the action for failure to comply
21 with an Order of the Court. Moreover, the severity of the sanction is lessened
22 because the dismissal is without prejudice rather than with prejudice, thereby
23 “giving the plaintiff an opportunity to return and prosecute his claims another day.”
24 *Ash v. Cvetkov*, 739 F.2d 493, 497 (9th Cir. 1984). In sum, dismissal without
25 prejudice is warranted.

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ORDER

It is ordered that the action is dismissed without prejudice. Fed. R. Civ. P. 41(b).

DATED: December 3, 2024

/s/

FERNANDO M. OLGUIN
UNITED STATES DISTRICT JUDGE